

Declaration, p. 2. In *KFRC*, the Commission also found it significant that the suburban community did not have its own phone book. *KFRC*, 5 FCC Rcd at 3224. Waco also does not have its own post office or telephone exchange. See *Rand McNally Commercial Atlas & Marketing Guide*, p. 532 (127th ed. 1996).

Under factor 6, there is little public transportation in either Waco or Robinson. Heftel Comments, p. 9. Robinson's health facilities consist only of a medical clinic, which is staffed by one physician and three employees who provide emergency and outpatient services. Robinson also has a dental clinic with three dentists. *Id.* Robinson does not have its own hospital, nor does it have any form of specialized health-care facility. Its primary commercial establishments are limited to a roofing company, a creamery, and a grocery store. *Id.*

With respect to factor 7, Robinson businesses advertise in Waco newspapers, on Waco radio and television stations, and in county-wide and state-wide merchandise papers. *Id.* at 9-10. Because the proposed facility would place a city-grade signal over 70% of the Waco Urbanized Area, and because Robinson has limited business activity, it is likely that most advertisers who would use the proposed station would be located outside the Robinson community. Thus, it is clear that Robinson is merely a small part of the Waco advertising market.

With respect to factor 8, Robinson has its own municipal services, police and fire protection, and schools. Heftel Comments, p. 10.

In analyzing the independence-interdependence criterion, there are, at most, three factors (3, 4 and 8) which tend to suggest that Robinson is independent of the Waco Urbanized Area. The remaining five factors firmly establish that Robinson is not sufficiently independent of the Urbanized Area to warrant a first local service preference. Although Robinson has its own local government,

police and fire departments, and schools, the Commission made clear in *KFRC* that a proponent who proposes to serve a lesser community within an urbanized area cannot establish that community's independence merely by showing the existence of a local government and ancillary municipal services. *KFRC*, 5 FCC Rcd 3224, n.13. In this case, the majority of Robinson's residents work in Waco. Robinson has only limited business activity, is dependent upon Waco for its hospital and other health care facilities, and is part of the same advertising market. Moreover, Robinson does not have its own post office, separate zip code or telephone exchange, and has no newspaper or telephone book. All of these items are provided by or shared with the immediately adjacent and substantially larger city of Waco.

The facts in this proceeding are substantially similar to those in *Del Rey Oaks, California*.⁴² Like Robinson, Del Rey Oaks has its own police force and an elected mayor and city council. The proponent claimed that the community also has its own city hall, several parks, a church, and several business establishments. *Id.* However, just as in the case of Robinson, the majority of the Del Rey Oaks residents work in the larger surrounding communities. Del Rey Oaks has no post office, zip code, or telephone exchange, and no newspaper or telephone book. *Id.* at 12684. All of these services were either provided by or shared with communities in the surrounding urbanized area. The

⁴² *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681 (Chief, Allocations Branch 1996) ("*Del Rey Oaks*"). In *Del Rey Oaks*, the proponent sought to downgrade its unbuilt construction permit from Channel 300B to Channel 300A, and reallocate the channel from Greenfield to Del Rey Oaks, California. The proposal would not have deprived Greenfield of its sole existing service, would have provided Del Rey Oaks with its first local service, and would have permitted the station to serve a greater population. 11 FCC Rcd at 12681-12682. Moreover, as a result of the proposed downgrade of the proponent's station to a Class A facility and the attendant diminished spacing requirements, the proposal also would have made possible three additional Class A allotments, two of which could provide a first local service to their communities, and the third of which could serve as a substitute FM allotment at Greenfield. *Id.* at 12682.

Branch also assumed that Del Rey Oaks was part of Arbitron's Monterey-Salinas-Santa Cruz advertising market. *Id.*

In light of these facts, the Branch found that Del Rey Oaks was not an independent community, but, rather, was part of the larger Seaside-Monterey Urbanized Area. *Id.* Therefore, the Branch attributed all of the radio services of the Urbanized Area to Del Rey Oaks and considered the petitioner's proposal pursuant to FM allotment priority 4. *Id.* After comparing the communities of Greenfield and Del Rey Oaks, the Branch further concluded that the proposal would not result in a preferential arrangement of allotments. *Id.*

In this case, just as in *Del Rey Oaks*, the limited evidence of independence under the third *Tuck* criterion is insufficient to overcome the overwhelming evidence that the Waco Urbanized Area is the relevant metropolitan "community," and that Robinson is merely an appendage of the larger central city. *See KFRC*, 5 FCC Rcd at 3223-24, citing *Tuck*, 3 FCC Rcd at 5379. *See also Del Rey Oaks*, 11 FCC Rcd 12681. Therefore, because all of the radio services in the Waco Urbanized Area should be attributed to the community of Robinson, Heftel's proposal must be considered under the fourth FM allotment priority ("other public interest matters"), rather than priority 3 ("first local service").

In comparing the communities of Corsicana and Robinson, Heftel's proposal does not result in a preferential arrangement of allotments. Corsicana, which has a population of 22,911, has only one other local radio station, Station KAND(AM). On the other hand, the Waco Urbanized Area is served by no less than 12 radio stations, all of which are attributable to Robinson.⁴³ Accordingly,

⁴³ Stations KBBW(AM), KBCT(FM), KCKR(FM), KKTK(AM), WACO-FM, KRZI(AM), KWBU(FM)*, KWTX(AM), and KWTX-FM are all licensed to Waco. Stations
(continued...)

pursuant to FM allotment priority 4, this case presents a comparison of a 13th service to Robinson, and a second local, and first competitive service, to the substantially larger community of Corsicana, which is over three times the size of Robinson.⁴⁴ Moreover, the downgrade of Station KICI-FM at Corsicana to Channel 300A and the proposed reallocation of that channel to Robinson would result in a substantial loss in population served -- 73,347 persons. Hefel Comments, p. 13. Therefore, Hefel's proposal to substitute Channel 300A for Channel 300C1 at Corsicana and reallocate Channel 300A to Robinson should not be adopted because it will not result in a preferential arrangement of allotments.⁴⁵ Furthermore, because the Channel 300A substitution at Robinson is necessary to accommodate the Channel 300C1 reallocation to Lewisville, Hefel's proposal to substitute Channel 300C1 for Channel 300C2 at Gainesville and reallocate Channel 300C1 to Lewisville also must be denied.

V. Conclusion.

As demonstrated herein, the Branch erred in dismissing Metro's counterproposal and by refusing to accept its curative reimbursement commitment. The Snyder Application constitutes a continuing expression of interest in the Channel 240C1 allotment at Mineral Wells, which was filed long before the initial comment deadline. Thus, because Hefel failed to protect the reference

⁴³(...continued)

KBRQ(FM), Hillsboro, KEYR(FM), Marlin, and KWOW(FM), Clifton, also serve the Waco radio market. *Broadcasting & Cable Yearbook*, p. D-694 (1998).

⁴⁴ As stated above, according to the 1990 U.S. Census, Corsicana has a population of 22,911, while Robinson has a population of only 7,111.

⁴⁵ The fact that the Channel 300A substitution to Robinson would permit the reallocation of Channel 300C1 to Lewisville, and thereby provide an additional service to a substantial number of people in the Dallas Urbanized Area (see Hefel's Comments, p. 13), should have no affect upon this determination. See *Del Rey Oaks*, 11 FCC Rcd at 12684, n.7.

coordinates of this allotment and the Snyder Application, its proposal was not technically correct and substantially complete as of the comment deadline. The Branch therefore erred in concluding that acceptance of Metro's curative reimbursement commitment would prejudice Heftel, whose proposal was defective from the outset.

The Branch also erred in treating the Snyder Application as a counterproposal in this proceeding and in entertaining the Heftel/Snyder settlement proposal. The settlement proposal constituted nothing more than a belated attempt to cure the fatal, technical deficiency in Heftel's original proposal, which could not be cured after the initial comment deadline. Moreover, Snyder's Application for Review establishes that the parties' settlement proposal has been terminated and that Snyder intends to continue to prosecute the timely Snyder Application at a site inconsistent with Heftel's proposal.

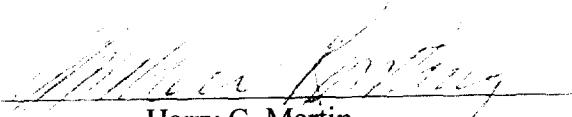
Finally, the Branch erred in concluding that the community of Robinson is entitled to a first local service preference. The record establishes that Robinson is interdependent with the Waco Urbanized Area, and, thus, that Heftel's reallocation proposal would not result in a preferential arrangement of allotments.

For all of these reasons, the Branch's *R&O* should be reversed and Heftel's rulemaking petition should be denied.

WHEREFORE, in light of the foregoing, Metro Broadcasters-Texas, Inc. respectfully requests that the Commission GRANT this Application for Review, AMEND the FM Table of Allotments by substituting Channel 237C2 for Channel 237C3 at Howe, Texas, and MODIFY the license of Station KHYI, Howe, Texas, to specify operation on Channel 237C2 in lieu of Channel 237C3.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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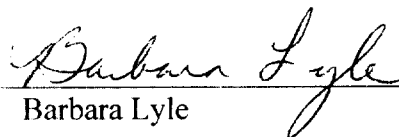
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